

EXHIBIT A

Tootell, Michael

October 25, 2007

Chicago, IL

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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In re: PHARMACEUTICAL) MDL No. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) No. 01-12257-PBS
-----X

VIDEOTAPED DEPOSITION OF MICHAEL TOOTELL

OCTOBER 25, 2007

CHICAGO, ILLINOIS

Videotaped Deposition of MICHAEL TOOTELL, at
71 South Wacker Drive, 32nd Floor, Chicago,
Illinois, commencing at 9:00 a.m. on Thursday,
October 25, 2007, before Donna M. Kazaitis, RPR,
CSR No. 084-003145.

Henderson Legal Services
202-220-4158

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<p>1 APPEARANCES OF COUNSEL:</p> <p>2</p> <p>3 FOR THE UNITED STATES:</p> <p>4</p> <p>5 U.S. DEPARTMENT OF JUSTICE</p> <p>6 CIVIL DIVISION</p> <p>7 BY: MS. ANN ST. PETER-GRIFFITH</p> <p>8 99 N.E. 4th Street</p> <p>9 Miami, Florida 33132</p> <p>10 (305) 961-9003</p> <p>11 ann.stpeter-griffith@usdoj.gov</p> <p>12</p> <p>13 FOR THE STATE OF CALIFORNIA:</p> <p>14</p> <p>15 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE</p> <p>16 BUREAU OF MEDI-CAL FRAUD & ELDER ABUSE</p> <p>17 BY: MR. ELISEO SISNEROS</p> <p>18 (via teleconference)</p> <p>19 110 West A Street, Suite 1100</p> <p>20 San Diego, California 92101</p> <p>21 (619) 688-6043</p> <p>22 eliseo.sisneros@doj.ca.gov</p>	<p>1 APPEARANCES OF COUNSEL: (CONTINUED)</p> <p>2</p> <p>3 FOR THE DEPONENT:</p> <p>4</p> <p>5 MAYER BROWN LLP</p> <p>6 BY: MR. JAMES R. FERGUSON</p> <p>7 71 South Wacker Drive</p> <p>8 Chicago, Illinois 60606</p> <p>9 (312) 701-7282</p> <p>10 jferguson@mayerbrownrowe.com</p> <p>11</p> <p>12</p> <p>13 ALSO PRESENT:</p> <p>14</p> <p>15 Anthony Micheletto, Videographer</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
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<p>1 APPEARANCES OF COUNSEL: (CONTINUED)</p> <p>2</p> <p>3 FOR THE RELATOR VEN-A-CARE OF THE FLORIDA</p> <p>4 KEYS, INC.:</p> <p>5</p> <p>6 ANDERSON LLC</p> <p>7 BY: MR. C. JARRETT ANDERSON</p> <p>8 1300 Guadalupe, Suite 103</p> <p>9 Austin, Texas 78701</p> <p>10 (512) 469-9191</p> <p>11</p> <p>12 FOR ABBOTT LABORATORIES:</p> <p>13</p> <p>14 JONES DAY</p> <p>15 BY: MR. JASON G. WINCHESTER</p> <p>16 77 West Wacker Drive</p> <p>17 Chicago, Illinois 60601-1692</p> <p>18 (312) 782-3939</p> <p>19 jgwinchester@jonesday.com</p> <p>20</p> <p>21</p> <p>22 (CONTINUED)</p>	<p>1 INDEX</p> <p>2</p> <p>3 WITNESS: MICHAEL TOOTELL PAGE</p> <p>4 Examination By Ms. St. Peter-Griffith..... 007</p> <p>5 Examination By Mr. Anderson..... 222</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 NUMBER DESCRIPTION PAGE</p> <p>9 Exhibit Tootell 001, MT 01286-01510..... 009</p> <p>10 Exhibit Tootell 002, Two CDs, ABT-DOJ-E 0545292</p> <p>11 -941 and ABT-DOJ 0309695</p> <p>12 -997..... 011</p> <p>13 Exhibit Tootell 003, MT 01260-01261..... 030</p> <p>14 Exhibit Tootell 004, ABT-DOJ-E 0545739-770..... 114</p> <p>15 Exhibit Tootell 005, ABT-DOJ-E 0545771-791..... 153</p> <p>16 Exhibit Tootell 006, ABT-DOJ-E 0545901-922..... 167</p> <p>17 Exhibit Tootell 007, ABT-DOJ-E 0545899-900..... 188</p> <p>18 Exhibit Tootell 008, ABT-DOJ-E 0545620-653..... 216</p> <p>19 Exhibit Tootell 009, ABT 52704-707..... 295</p> <p>20 Exhibit Tootell 010, ABT 52795-797..... 299</p> <p>21 Exhibit Tootell 011, ABT 53177-180..... 303</p> <p>22 Exhibit Tootell 012, ABT-DOJ 296250-256..... 307</p>

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<p style="text-align: right;">Page 122</p> <p>1 of the trade press at that point. 2 Q. Did you look to anything to provide the 3 information for your presentation or for your 4 overview? 5 A. I'm sure I did. 6 Q. Do you recall what you reviewed? 7 A. No. I do not. 8 Q. Let me ask you, did you orally or 9 verbally present this presentation? 10 A. It was a Powerpoint presentation, and I 11 presented it in person. 12 Q. Was anyone else from Abbott in 13 attendance? 14 A. No. 15 Q. And you say, the next item says 16 "Congressional Pharmacy Proposals." Do you see 17 that? 18 A. Uh-huh. 19 Q. Is that just your description of you're 20 going to discuss congressional pharmacy 21 proposals? 22 A. Yes.</p>	<p style="text-align: right;">Page 124</p> <p>1 compendia, your phrase. The compendia add a 2 mark-up from their own processes and publish and 3 charge publication prices for the average 4 wholesale price publications. 5 The process of setting an AWP requires 6 two participants, the manufactures and the 7 compendia of publishers. 8 Q. When it says "Manufacturer List Catalog 9 Prices, Plus A Mark-up," is that the mark-up that 10 you're discussing the compendia attached? 11 A. Yes. 12 Q. Your next bullet point says "Published 13 by First Databank, Medi-Span, and Red Book." Is 14 that just a description of the compendia? 15 A. Yes. Those are three different 16 compendia. And First Databank and Medi-Span I 17 believe have merged. 18 Q. The next item says "First Databank 19 Survey of Wholesale Distributors." What survey 20 are you referencing? 21 A. First Databank has a survey that they 22 cite as a, or certainly did in 2000, as a</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. If you can flip to the next page, it 2 says "Background, Average Wholesale Prices." Oh, 3 let me ask you, did anyone else participate in 4 the drafting of this or was this exclusively your 5 drafting? 6 A. Not that I recall. I don't recall 7 anybody else working on drafting this. 8 Q. Is it fair to then for us to conclude 9 this was your work product? 10 A. This was my work product, sure. 11 MR. WINCHESTER: Objection, form. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Can you explain the information that's 14 contained in each of the bullet points on this 15 page, please? 16 A. As I described earlier this morning, 17 the process of setting average wholesale prices 18 is two participants. The manufactures are asked 19 to provide their list prices, their highest 20 published prices. And we had an extensive 21 discussion this morning about that. 22 Those prices are delivered to the</p>	<p style="text-align: right;">Page 125</p> <p>1 reference for the mark-up. 2 Q. And the next item is "AWPs are 3 determined by manufacturers." Do you see that? 4 A. Yes. I see that. 5 Q. What did you mean by that? 6 A. Well, it clearly needs to be understood 7 in the context of that whole thing that 8 manufacturers start the process and can't be 9 completed without the compendia. 10 Q. Did you communicate this information to 11 the folks at Cardinal that you made this 12 presentation to? 13 A. Sure. 14 Q. Let me ask you, is there anything in 15 this presentation that you can think of that you 16 left out -- 17 MR. FERGUSON: Object to form. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. -- in your verbal -- it was poorly 20 phrased. 21 When you verbally presented this 22 Powerpoint presentation, did you present each of</p>

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<p style="text-align: right;">Page 314</p> <p>1 MR. WINCHESTER: The same for Abbott as 2 well. 3 MR. SISNEROS: And on behalf of 4 California we have yet to take our turn to ask 5 our questions. 6 MR. ANDERSON: Let's go off the record. 7 THE VIDEOGRAPHER: We are off the 8 record at 5:07 p.m. with the conclusion of 9 today's deposition of Michael Tootell. 10 (WHEREUPON said deposition was so 11 adjourned.) 12 13 14 15 <u>MICHAEL TOOTELL</u> 16 17 Subscribed and sworn to and before me 18 this _____ day of _____, 20____. 19 20 21 _____ 22 Notary Public</p>	
<p style="text-align: right;">Page 315</p> <p>1 STATE OF ILLINOIS) 2 COUNTY OF C O O K) 3 I, Donna M. Kazaitis, RPR, CSR No. 4 084-003145, do hereby certify: 5 That the foregoing deposition of MICHAEL 6 TOOTELL was taken before me at the time and place 7 therein set forth, at which time the witness was 8 put under oath by me; 9 That the testimony of the witness and all 10 objections made at the time of the examination 11 were recorded stenographically by me, were 12 thereafter transcribed under my direction and 13 supervision and that the foregoing is a true 14 record of same. 15 I further certify that I am neither counsel 16 for nor related to any party to said action, nor 17 in any way interested in the outcome thereof. 18 IN WITNESS WHEREOF, I have subscribed my name 19 this 29th day of October, 2007. 20 21 _____ 22 Donna M. Kazaitis, RPR, CSR 084-003145</p>	

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